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No. 95-1980

In The

Supreme Court of the United States

October Term, 1995

DAVID RIVKIN, EDWARD RIVKIN, JUDITH RIVKIN, t/a GALAXY MANOR, a New Jersey Partnership,

Petitioners,

vs.

DOVER TOWNSHIP RENT LEVELING BOARD,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of New Jersey

RESPONDENT'S BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF THE CASE

Although mentioned by Petitioner in oblique fashion, Petitioner does not advise this Court that following the remand hearings required by the Superior Court of New Jersey, Law Division judgment, substantial additional hearings were held before the Dover Township Rent Leveling Board. The result of those hearings was the granting of additional capital improvement increases which are mentioned in Petitioner's Brief (PB3;2).

Following the result of those remand hearings, the same Mobile Home Park commenced a Prerogative Writ action to seek a reversal of the results of those remand hearings. In that action, both the Board and Mr. Baltarzuk, individually, were sued. That case was tried to the court sitting without a jury and a judgment rendered in favor of the Rent Leveling Board. (RA 1a-3a). The conduct of the Board was found to be appropriate and not arbitrary, capricious or unreasonable, and the Prerogative Writ Complaint was dismissed. Subsequently, the remaining claims in the case were dismissed by Stipulation of Dismissal (RA 4a-5a). Galaxy Manor Mobile Home Park has, therefore, received all of the capital improvement increases it was ever entitled to. No appeal was ever taken from the second Prerogative Writ trial judgment, nor from the dismissal of suit number two. The judgment of the trial court and Stipulation of Dismissal are a portion of Respondent's Appendix to this Court.

We also note that Petitioner has not provided this Court with three letters of the trial court which constitute a portion of its Opinion. We concede that that omission has no bearing on the Petition, since the letters of the court speak to counsel fee issues which were never reached by virtue of the state court's final decision.

The Municipal Ordinance has been included in Respondent's Appendix as well (RA 6a-42a).

I.

THERE HAS BEEN NO DENIAL OF PETITIONERS' EQUAL PROTECTION RIGHTS.

Petitioners' brief leaps a chasm concluding without a factual foundation that the conduct that they contend equates to a violation of substantive due process rights should somehow equal "purposeful discrimination" and, therefore, also equate to an equal protection violation. Other than to describe cases that conclude that equal protection may apply in the land use context, there is no analysis nor argument presented as to how these principles apply in this particular case.

It is abundantly clear that in assessing equal protection arguments, legislative enactments reasonably related to legitimate state interests which are, therefore, in furtherance of appropriate legislative goals are not violative of due process or equal protection. *Pennell v. City of San Jose*, 485 U.S. 1, 11-15, 108 S. Ct. 849, 99 L. Ed. 2d 1 (1988). Thus, it seems clear that the equal protection argument being made cannot be infered to rise from the Dover Township Ordinance in question. Further, "the Fourteenth Amendment gives the Federal Courts no power to impose upon the States their views of what constitutes wise economic or social policy." *Dandridge v. Williams*, 397 U.S. 471, 485-86, 90 S. Ct. 1153, 25 L. Ed. 2d 491 (1970).

In effect, something more than simply labeling facts as a denial of equal protection must be shown. In this case, there is no animus or racial motivation alleged nor proven. It appears as the New Jersey Supreme Court perceived Petitioners' equal protection argument, that Petitioners' have simply endeavored

to relabel a due process argument (whether it be viewed to be substantive or procedural) as an equal protection argument (PA31A-33A). The real argument being made by these Petitioners, although there has been an effort to shift the labels as the argument has failed, is that the process they were subject to was deficient because of Mr. Baltarzuk's behavior. That position was seen by the Superior Court, Appellate Division (PA40) as a procedural due process violation, and it was found by the Appellate Division that no procedural due process violation had occurred because Mr. Baltarzuk's behavior was random, in accordance with the doctrine of *Paratt v. Taylor*, 451 U.S. 527, 101 S. Ct. 1908, 68 L. Ed. 2d 420 (1981), and there was an adequate post deprivation remedy.

The New Jersey Supreme Court, for purposes of reaching both the procedural and substantive due process arguments, assumed, *arguendo*, a substantive due process violation for the purpose of being able to address it. The New Jersey Supreme Court found that "the conduct of an errant board member who berated an applicant and brought in facts outside the record at a rent proceeding in violation of acceptable board practice does not rise to the level of a substantive due process violation under the Supreme Court standards." (A14A) "Even though the Rent Leveling Board may have violated its own standards of governance by allowing a member with a demonstrated bias to participate in the hearing, we believe that such governmental action does not give rise to a substantive due process claim." (A17A).

The factual circumstances as found by both the Appellate Division and the New Jersey Supreme Court were the same as the trial court but viewed differently. That, although crude and/or out of line with appropriate board member behavior, the conduct was rational since it was based upon Mr. Baltarzuk's repeatedly stated ability to deal with the application on the merits and not be

prejudiced. Further that position was, in part, premised upon the Ordinance (PA48) (RA38a) and the fact of Mr. Baltarzuk's belief that his position on the Board was that of a tenant member. (PA48; A4; A19).

This understanding, albeit possibly a nuance, has escaped Petitioners, potentially because they have been too close to another view of what was occurring, both in the original hearings before the Board and subsequently in all of the litigation. However, proof of the pudding comes to pass in assessing the equal protection argument that is raised because certainly if the behavior of the board member were "truly irrational" such as to reach any judgmental level of shocking or offensive behavior, the equal protection argument put forth would have some bite and substance. It has none because whether you are trying to relabel a procedural due process argument as equal protection or simply call it equal protection from the outset, the majesty of the argument stands out from the content of the facts, and that does not occur in this case.

What has really been argued is that there has been a due process violation. We believe that the due process violation is a procedural due process violation to which *Paratt, supra*, more than adequately speaks. The New Jersey Supreme Court appears to agree (A20A-21A).

II.

THERE IS NO COMPELLING REASON TO GRANT THIS WRIT, THE NEW JERSEY SUPREME COURT HAS DECIDED WHAT THE STATE'S SUBSTANTIVE LAW IS AND THIS COURT SHOULD HONOR THAT DETERMINATION AND DENY GRANTING THE PETITION.

Petitioners' brief contains commentators' suggestions that the United States Supreme Court might further define substantive due process (PA11-12). It is also argued that as a matter of federal law a number of circuit courts of appeal may or may not decide this case differently than the Appellate Division and New Jersey Supreme Court decided it (PB12-13). Thus, the argument goes, *a fortiorari*, this Court must decide this case as a method of rectifying the differences between decisions in the circuits and/or New Jersey Supreme Court. But why, factually, legally, is it only because the state courts decided the facts contrary to Petitioners. The entreaty is inappropriate.

In accordance with the Constitution of the United States, the Tenth Amendment requires that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The Constitution and concepts of federalism require that for this Court to exercise jurisdiction, something more than entreaties and/or commentary are required.

It is simply clear that property law concepts are concepts which are to be set by state law. *Budinick v. Becton Dickinson and Company*, 486 U.S. 196, 198, 108 S. Ct. 1717, 1720, 100 L. Ed. 2d 178 (1988). Even in the context of regulatory takings and/or deprivations of property rights found to equate to a constitutional level, this Court honors principles of federalism

in determining that questions of state law shall be dealt with by state courts and not by the United States Supreme Court. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 112 S. Ct. 2886, 120 L. Ed. 2d 798 (1992).

What are the facts and/or the legal proposition that cry out for this Court's attention? None are really postulated.

Is it that in addition to an effort to label a procedural due process claim, a substantive due process claim, and then as an equal protection claim, that another relabeling is sought? Is this an effort by this party to relabel claims barred by *Yee v. City of Escondido*, 503 U.S. 519, 112 S. Ct. 1522, 118 L. Ed. 2d 153 (1992) and *Lucas, supra*, as something else in the hopes of some other reexamination? No basis is set forth for this Court to exercise jurisdiction because there is none, only a hope that will happen.

III.

AT MOST, PROCEDURAL DUE PROCESS VIOLATIONS OCCURRED IN THE MUNICIPAL RENT LEVELING BOARD HEARINGS. THOSE "VIOLATIONS" RESULTED FROM RANDOM CONDUCT OF A BOARD MEMBER FOR WHICH THERE WAS AN ADEQUATE POST DEPRIVATION REMEDY BARRING A CONSTITUTIONAL CLAIM.

There is no question but that the hearings which occurred before the Dover Township Mobile Home Park Rent Leveling Board were unseemly due to the sparring between Mr. Baltarzuk (the Board Member), Mr. Rivkin (also a Board Member but the applicant in this case), and Mr. Levin (the Attorney for Mr. Rivkin). The issue, however, is not who was rude to whom first, but whether the conduct of the board member or Board was a

denial of due process rights and rises to the level of implication of a constitutional right.

It is important to note that the trial court did not determine that what the Board did or did not do was improper (PA81; PA85). Rather, the trial court affirmatively determined that the other members of the Rent Leveling Board were not exhibiting the prejudice Mr. Baltarzuk had (PA85). It was only determined that bias had been shown by one member of the Board, and that the chairperson had made a mistake in not removing that person. There is also no showing whatsoever of any individual bias or motivation arising from financial gain or any of the obvious principles of law which would dictate that a board member of any municipal entity was biased by virtue of personal interest or the like.

As the New Jersey Supreme Court saw the issue (as well as the Appellate Division), "Mr. Baltarzuk's conduct was not 'truly irrational.' " Mr. Baltarzuk appears to have mistakenly believed that it was his duty to serve as a tenant advocate. From this mistaken premise, Baltarzuk's actions were rational. Moreover, all of Baltarzuk's actions were related to the merits of the rent proceeding. The Board's original determinations about the eligibility, as capital improvements, of things such as a "Bob-Cat" loader were at least debatable and Baltarzuk was correct that the base rent of one of the tenants was mis-stated." (PA19-20).

In fact, no court has ever found that the Board itself was prejudiced. Only the one member was, at most.

In this context, we assert that the most that could ever have occurred is that there was a procedural due process violation. (Assuming, *arguendo*, that the Board accepts that proposition that a due process violation occurred which is not accepted. The

New Jersey Supreme Court does not accept the proposition that a substantive due process violation occurred, but at most a procedural due process violation occurred (PA20)).

With that perspective of what factually occurred, it becomes clear how and why the New Jersey Superior Court, Appellate Division determined that the conduct was truly random and fit the definition of *Paratt*. Further, the New Jersey Supreme Court reached the same logical conclusion, and then went further to describe the adequacy of the post-deprivation procedural due process violation remedy.

New Jersey's Prerogative Writs remedies are well developed. Prior to the New Jersey Constitution's re-writing in 1947, Writs practice was a substantial part of state law. With the adoption of the re-written Constitution, the New Jersey Constitution of 1947, Article VI, Section 5, paragraph 4, provides that: "Prerogative Writs are superseded and, in lieu thereof, review, hearing and relief shall be afforded in the Superior Court, on terms and in the manner provided by Rules of the Supreme Court, as of right, except in criminal causes where such review shall be discretionary." This process has been codified into the New Jersey Court Rules as Rule 4:69-1 *et seq*.

As can be seen from this Petitioner's inability to accept the determination of the trial court that a remand was appropriate (by its cross appeal (PA6)) following that remand to its conclusion in this case projects the adequacy of New Jersey's post deprivation remedy.

As a result of the remand, the applicant Mobile Home Park, after an admitted delay, received a total of $45,731.09 of capital improvement out of $59,624.96 applied for (PB3;2). That is approximately 77% of what was originally sought. Other than the amount, what is also significant is that as a matter of law, the

same Mobile Home Park accepted the propriety of that 77% being all that they were entitled to.

Following the remand and the Board's decision on that remand, the Mobile Home Park commenced an additional Prerogative Writ action in which they sought to overturn and declare as arbitrary and capricious the Board's second decision. That action was the subject of a trial in the Superior Court, Law Division on the state standard of whether the Board's second decision was arbitrary, capricious, or unreasonable. Judgment was entered against the Mobile Home Park and in favor of the Board (RA 1a-3a). As a result of that determination, the whole of that second Prerogative Writ action, to dispute the full amount of the sought-after capital improvement increase, was then settled by a mutual dismissal (RA 4a-5a). Thus, the remand and the Prerogative Writ procedure gave this Mobile Home Park all that they were ever entitled to by way of monetary relief without the necessity of even considering a cause of action pursuant to 42 U.S.C. § 1983, *et seq.*

One of the entreaties that this Mobile Home Park makes on this Petition is that this case cries out for this Court's attention. They have failed, as we have tried to demonstrate, to describe from a factual point of view why that is so. It seems clear that when taken in the context of the New Jersey Supreme Court's understanding of the real dynamics of everyone's conduct at the rent leveling hearings, the activities of Mr. Baltarzuk were truly random and tailor-made for a *Paratt* analysis.

Although founded upon other constitutional provisions and/or rubrics, it is important to note that in the area of protection of real property rights pursuant to the Fifth and Fourteenth Amendment in both physical and regulatory taking cases, that this Court's case by case method is and has been preserved and followed. *See Yee v. City of Escondido* and *Lucas v. South*

Carolina Coastal Council. Other than waiving the banner of substantive due process, where is any reason set forth that substantiates why this case should be decided differently? If we, as the New Jersey Supreme Court counselled in quoting this Court, back off from the lofty labels of equal protection and substantive due process. (*See Allbright v. Oliver*, 510 U.S. 114 S. Ct. 807, 127 L. Ed. 2d 114 (1994), *reh. denied*, __ U.S. __, 114 S. Ct. 1340, __ L. Ed. 3d __ (1994)) there is no reason to grant this Petition based on this case's merits.

This analogy has more currency than simply also dealing with taking issues as to real property cases, and why the principles that apply to each of the lines of cases should be equal. The line of the analogy as developed in *Nollan v. California Coastal Commission*, 483 U.S. 825, 107 S. Ct. 3141, 97 L. Ed. 2d 677 (1987) of what equals a legitimate state interest and the connection between the regulation and the state interest presents a *quid pro quo* and/or balancing. The New Jersey Prerogative Writs remedy provides the same because the most that this Petitioner is to bear is a delay in the remedy, and here we have seen that the delay gets them to no more than what they were ever entitled to in the first place. This is analogous to this Court's thinking that "there are good reasons for our frequently expressed belief that when the owner of real property has been called upon to sacrifice all economically beneficial uses in the name of the common good, that is, to leave his property economically idle, he has suffered a taking." *Lucas v. South Carolina Coastal Council*, 112 S. Ct. 2886, 2895 but not so when the taking is 95% of the whole, barring what the facts of the case compel. Here those facts compel a denial of the Petition.

CONCLUSION

For all of the reasons indicated, it is respectfully urged that the application for Petition for Writ of Certiorari should be denied, and the New Jersey Supreme Court decision sustained.

Respectfully submitted,

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APPENDIX A — JUDGMENT OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, OCEAN COUNTY FILED APRIL 6, 1994

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
OCEAN COUNTY

Docket No.: OCN-L-4205-92

CIVIL ACTION

David Rivkin, Edward Rivkin and Judith Rivkin t/a Galaxy Manor a New Jersey Partnership,

Plaintiffs,

vs.

Dover Township Rent Leveling Board, and Edward Baltarzuk,

Defendants.

JUDGMENT DISMISSING PREROGATIVE WRITS COUNTS I AND II

THIS MATTER having been tried on the 15th day of March, 1994, before the Honorable Thomas E. O'Brien, J.S.C., and the

Appendix A

firm of Levin, Shea, Pfeffer, McMahon & Russell, P.A., having represented the Plaintiffs, David Rivkin, Edward Rivkin, and Judith Rivkin, t/a as Galaxy Manor, with Reuel E. Topas, Esquire, appearing, and the firm of Babcock, Hennes & Bielory, P.C., representing Defendants, Dover Township Rent Leveling Board and Edward Baltarzuk, and Peter S. Hennes, Esquire, appearing, and it further appearing that the Court having read and considered the proofs in this matter, and having heard and considered argument of counsel; and the Court having issued a written decision; and for good cause shown;

IT IS therefore, on this 6th day of April, 1994, ORDERED as follows:

1. The Court has determined that the Dover Township Rent Leveling Board's decision on remand from Hearings held on May 5, 1992 and June 16, 1992, was reasonably reached and Plaintiffs application for payment of additional capital improvements are denied.

2. The Court has determined from an examination of the record of the Hearing dates of May 5, 1992 and June 16, 1992, and July 7, 1992, there was no bias affecting the Board's evaluation of Plaintiffs application for a rental increase. The Court has further determined, The Dover Township Rent Leveling Board arrived at this decision reasonably and logically and the Defendants did not exhibit bias or partiality.

3. The Court does not find the actions of the Dover Township Rent Leveling Board to be arbitary, capricious or unreasonable and, consequently, will not disturb its findings and Counts I and II, of the Complaint in Lieu of Prerogative Writs, are dismissed.

Appendix A

s/ Thomas E. O'Brien
Hon. Thomas E. O'Brien, J.S.C.

APPENDIX B — STIPULATION OF DISMISSAL FILED AUGUST 24, 1994

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION — OCEAN COUNTY

DOCKET #: OCN-L-4205-92

CIVIL ACTION

David Rivkin, Edward Rivkin and Judith Rivkin t/a Galaxy Manor a New Jersey Partnership

Plaintiff(s)

vs.

Dover Township Rent Leveling Board, and Edward Baltarzuk

Defendant(s)

STIPULATION OF DISMISSAL

The matter in difference in the above entitled action having been amicably adjusted by and between the parties, it is hereby stipulated and agreed that the same be and it is hereby dismissed without costs against either party.

Appendix B

By: s/ Courtland T. Babcock
Courtland T. Babcock, II
Attorney for Defendant

Babcock, Hennes & Bielory PC

Dated: 8/8/94

By: s/ Reuel E. Topas
Reuel E. Topas, Esquire
Attorney for Plaintiff

APPENDIX C — TOWNSHIP OF DOVER ORDINANCE

MOBILE HOME PARKS

Chapter 104

MOBILE HOME PARKS

ARTICLE I
General Provisions

§ 104-1. Definitions.

§ 104-2. License required.

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§ 104-4. Application for license.

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§ 104-10. Service buildings.

§ 104-11. Laundry facilities.

§ 104-12. Sewage disposal.

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§ 104-13. Refuse disposal.

§ 104-14. Insect and rodent control.

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§ 104-16. Oil-burning heating and cooking stoves.

§ 104-17. Fuels.

§ 104-18. Animals and pets.

§ 104-19. Alterations and additions.

§ 104 20. Recreation areas.

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DOVER CODE

§ 104-22. Supervision.

§ 104-23. Communicable diseases.

§ 104-24. Revocation of license.

§ 104-25. Posting of license and regulations.

§ 104-26. Violations and penalties.

Appendix C

ARTICLE II
Rent Leveling; Rent Leveling Board

§ 104-27. Definitions.

§ 104-28. Determination of rents.

§ 104-29. Reduction for municipal code violations.

§ 104-30. Timing of increase; excess increase.

§ 104-31. Rent reduction procedure.

§ 104-32. Tax surcharges.

§ 104-33. Tax appeals.

§ 104-34. Additional rent increases.

§ 104 35. Rent Leveling Board.

§ 104 36. Rent equalization.

§ 104-37. Standards.

§ 104-38. Violations and penalties.

§ 104-39. (Reserved)

[HISTORY: Adopted by the Township Committee of the Township of Dover: Art. I, 8-22-61 as Ord. No. 606; Art. II, 10-26-76 as Ord. No. 1598, amended in its entirety 4-11-78 by Ord. No. 1733. Other amendments noted where applicable.]

Appendix C

GENERAL REFERENCES

Building Code — See Ch. 59.
Land use and development regulations — See Ch. 101.
Mobile food units — See Ch. 103.
Trailer camps — See Ch. 139.

Appendix C

Be it ordained by the Township Committee of the Township of Dover, County of Ocean and State of New Jersey, as follows:

ARTICLE I
General Provisions
[Adopted 8-22-61 as Ord. No. 606]

§ 104-1. Definitions.

As used in this Article, the following terms shall have the meanings indicated:

DEPENDENT MOBILE HOME — A mobile home which does not have a toilet or a bath or a shower.

DEPENDENT MOBILE HOME SPACE — A mobile home space which is designed to accommodate a dependent mobile home and does not have sewer and water connections to accommodate the toilet and the bath or shower in a mobile home.

INDEPENDENT MOBILE HOME — A mobile home that has a toilet and a bath or shower.

INDEPENDENT MOBILE HOME SPACE — A park space which has sewer and water connections designed to accommodate the toilet and bath or shower contained in an independent mobile home.

MOBILE HOME — Any portable structure or vehicle, so constructed and designed as to permit occupancy thereof for dwelling or sleeping purposes.

Appendix C

MOBILE HOME PARK — Any plot or ground upon which two (2) or more mobile homes, occupied for dwelling or sleeping purposes, are located, regardless of whether or not a charge is made for such accommodation.

PARK or CAMP — Mobile home park.

PERSON — Any individual, firm or corporation.

SERVICE BUILDING — A building housing toilet facilities with slop-water closet and laundry facilities and with separate bath and shower accommodations.

§ 104-2. License required.

A. Two (2) or more inhabited mobile homes shall be located in licensed mobile home parks.

B. It shall be unlawful for any person to maintain or operate within the limits of the Township of Dover, Ocean County, New Jersey, any mobile home park containing two (2) or more mobile homes unless such person shall first obtain a license therefor. All mobile home parks in existence upon the effective date of this Article shall within two (2) years thereafter obtain such license, and in all other respects comply with the provisions of this Article, with the exception of the minimum acreage requirement hereinafter set forth in § 104-6H. In the event any mobile home park in existence upon the effective date of this Article shall fail to comply with the provisions of this Article within said two-year term, any license heretofore issued to said mobile home park shall be revoked.

Appendix C

C. Licenses shall not be transferable without the consent of the licensing authority.

§ 104-3. License fees.

A. The annual license fee for each mobile home park shall be one hundred fifty dollars ($150.).

B. In addition to the aforementioned annual license fee of one hundred fifty dollars ($150.), the owner of each mobile park shall pay the sum of one dollar and fifty cents ($1.50) per week, or fraction thereof, for each mobile home located in said mobile home park, and it shall be the duty and responsibility of the owner to keep complete and accurate records of the rental for each mobile home in said park. This fee shall be paid to the Building Inspector at least once a month.

§ 104-4. Application for license.

A. Applications for a mobile home park license shall be filed with and issued by the Building Inspector. Applications shall be in writing, signed by the applicant, and shall contain the following:

(1) The name and address of the applicant.

(2) The location and legal description of the mobile home park.

(3) A complete plan of the park, showing compliance with § 101-6 of this ordinance, including plans for sewage and water facilities.

(4) Plans and specifications of all buildings and other improvements constructed and to be constructed in year for which application is made, to enable the issuing authority to determine if the proposed park will comply with legal requirements.

B. The application and all accompanying plans and specifications shall be filed in triplicate. The Building Inspector shall investigate the applicant and inspect the proposed plans and specifications and shall submit same to the Planning Board for its approval. If the applicant is found to be of good moral character and the proposed mobile home park will be in compliance with all provisions of this ordinance and all other applicable ordinances or statutes, the Planning Board shall approve the application, and upon completion of the park according to the plans, the Building Inspector shall issue the license, subject to prior approval of the Planning Board.

C. The said license shall not issue initially unless and until the applicant shall have secured a special use permit pursuant to Ordinance No. 479,[1] as amended and supplemented. It is recognized that upon application for such special use permit under said Ordinance No. 479 and pursuant to the statutes in such case made and provided, hearing as required by law will be held and required notice given. The necessary action to be taken by the Planning Board hereunder shall not require a public hearing.
[Added 3-27-62 by Ord. No. 631]

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1. Editor's Ncte: Ord. No. 479 was repealed and replaced by Ord. No. 965, which is included as Ch. 145, Zoning.

Appendix C

§ 104-5. Parking prohibited except in parks.

Mobile homes shall not be parked on any public thoroughfare, street, alley or public place[2] in the Township of Dover, Ocean County, New Jersey, for longer than twelve (12) hours when no emergency for repairs exists.

§ 104-6. Mobile homes park plan.

The mobile home park shall conform to the following requirements:

A. The park shall he located on a well drained site, properly graded to insure rapid drainage and freedom from stagnant pools of water. Walks, driveways and retaining walls shall be constructed as not to interfere with drainage. Drainage shall be away from mobile home spaces, service buildings and recreational areas. Storm water shall not drain into sanitary sewers.

B. Mobile home spaces shall be provided consisting of a minimum of two thousand eight hundred (2,800) square feet for each space, which shall be at least thirty-five (35) feet wide and clearly defined. Mobile homes shall be so parked on each space that there shall be at least twenty-foot clearance between mobile homes. No mobile home shall be located closer than fifty (50) feet from a dwelling and closer than ten (10) feet from any property line bounding the park, or closer than one hundred (100) feet from any public street or highway right-of-way line.

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2. Editor's Note: As to traffic regulations, see Ch. 143, Vehicle and Traffic.

Appendix C

C. All mobile home spaces shall abut upon a surfaced bituminous concrete road of not less than thirty (30) feet in width, with curbing in accordance with township specifications.

D. Surfaced macadam walkways not less than three (3) feet wide shall be provided from the mobile home spaces to the service buildings.

E. Each park shall provide service buildings to house toilet facilities, bathing facilities, laundry facilities and other sanitary facilities as hereinafter more particularly prescribed.

F. Safety and convenience shall be major consideration in the layout of driveways, walks and parking areas within the mobile home park, and driveways shall be continuous insofar as possible.

G. The number of parking spaces shall equal the number of mobile home spaces. These must be provided in special parking areas.

H. No license shall be granted to any mobile parking unit on plan comprising less than ten (10) acres, provided, however, that this provision of minimum acreage (and only this provision) shall not apply to any trailer courts, parks or mobile home parks duly licensed and in existence prior to the adoption of this ordinance, in accordance with township and New Jersey Codes.

I. The subdivision of lots in the mobile park unit shall avoid a grid pattern.

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J. All plans shall provide for landscaping.

K. All plans shall indicate a ten-foot buffer zone along side lines and rear lines, with adequate landscaping or shrubbery.

L. Prior to the approval of any plan, the Planning Board shall require that the applicant shall post a surety bond in form required by the township for subdivisions, and in an amount to be fixed by the Planning Board, to cover the cost of installation of roads and in compliance with §§ 104-6, 104-7, 104-9, 104-10, 104-11 and 104-12.

M. Neither the establishment of any road on said plan or the requirement of any bond shall relieve the owner of the park from the maintenance of all roads as shown on said plan.

N. It shall be the duty and responsibility of the owner to remove all snow from roads and walks in park or camp within twenty-four (24) hours after the cessation of fall. In the event that the owner fails so to do, the township shall have the right to effect such snow removal as may be required for the health, safety and welfare of the occupants of said park, and the cost thereof shall be charged against the owner for said snow removal. Failure to pay the cost of said snow removal within thirty (30) days after demand by the township shall be cause for the revocation of the license for said park.

O. Said plan shall also provide for adequate drainage of the park and all requirements of drainage off-site, in accordance with the township rules and regulations, and ordinances governing same shall be complied with.

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§ 104-7. Electricity and lighting.

A. Every mobile home park shall be provided with electric power. An electric outlet supplying one hundred ten to one hundred fifteen (110-115) volts should be provided for every mobile home space. The outlets shall be weatherproof, and in easy reach of parked mobile home. In no instance should any power line across the mobile home area be less than eighteen (18) feet above the ground. All electric wiring in the mobile home park should be in accordance with the Ocean County and New Jersey Codes, or in the absence of local codes, then in accordance with the National Electrical Code. Adequate overcurrent protection shall be provided on all circuits. Service drops to each mobile home space shall be weatherproof, insulated and not smaller than two (2) Number 8 wires.

B. Street and yard lights sufficient in number and intensity to permit safe movement of vehicles and pedestrians shall be provided. Lights shall be at least twenty-five (25) watts, spaced at intervals of at least one hundred (100) feet and located approximately fifteen (15) feet from the ground, and shall be effectively related to buildings, walks, trees, steps and ramps. Lights shall be kept burning from sunset to sunrise.

§ 104-8. Location.

Mobile home parks shall be located only in rural, highway, business and industrial zones.

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§ 104-9. Water supply.

A. All mobile home parks shall be connected with an approved public water supply where available, supplied to each mobile home space by pipe.

B. Where a public water supply is not available, a suitable private water supply shall be developed that meets standards prescribed by the New Jersey Department of Health as safe for drinking purposes. Water shall be piped to each mobile home space.

C. Water distribution and storage facilities shall be adequate to supply a continuous year-round frost-free water supply of at least one hundred fifty (150) gallons per day per mobile home space, at a rate of six (6) gallons per minute, with a residual pressure of twenty (20) pounds per square inch. Wells shall be at least ten (10) feet deep and located at least two hundred (200) feet from any privy, septic tank or cesspool and/or as approved by a health officer, and as required by local ordinance.

D. Dependent mobile home spaces shall be provided with sanitary facilities in service buildings not less than twenty-five (25) or more than one hundred fifty (150) feet from any dependent mobile home, as outlined in § 104-10 below. Such service buildings shall provide abundant hot water supply at all times for bathing, washing and laundry facilities.

§ 104-10. Service buildings.

Each park renting space to dependent mobile homes shall be

provided with toilets, baths or showers, slop sinks and other sanitation facilities, which shall conform to the following requirements:

A. Toilet facilities of men and women shall be either in separate buildings at least twenty (20) feet apart, or shall be separated, if in the same building, by a soundproof wall.

B. Flush toilets shall be placed in conveniently located buildings not more than a distance of two hundred (200) feet from any dependent mobile home. The building shall be well lighted at all times, ventilated with screened openings and constructed of moistureproof materials permitting satisfactory cleaning. The floors shall be concrete or similar materials, slightly pitched to a floor drain. Toilets shall be enclosed in separate compartments with doors, and have a minimum width of two (2) feet eight (8) inches. Toilet facilities for women shall consist of not less than one (1) flush toilet for every five (5) dependent mobile home spaces, one (1) shower or bath for every five (5) dependent mobile home spaces, and one (1) lavatory with hot and cold running water for every five (a) dependent mobile home spaces. Each toilet and bathtub shall be in a private compartment.

C. Toilet facilities for men shall consist of not less than one (1) flush toilet for every five (5) dependent mobile home spaces, one (1) shower or bathtub for every five (5) dependent mobile home spaces, and one (1) lavatory with hot and cold running water for every five (5) dependent mobile home spaces. Each toilet, shower and bathtub shall be in a private compartment.

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D. An independent mobile home may be parked on a dependent mobile home space, but the requirements of § 101-10A, B and immediately hereinabove specified shall not thereby be affected.

E. A dependent mobile home may be parked on an independent mobile home space, but in such event such space shall be regarded as being a dependent mobile home for the purpose of determining compliance with the provisions of § 104-10 A, B and C.

F. Service buildings housing the toilet facilities shall be permanent structures complying with all applicable ordinances and statutes regulating buildings, electrical installations and plumbing and sanitation systems, and shall be located not closer than twenty-five (2a) feet, not farther than one hundred fifty (150) feet, from any dependent mobile home space.

G. Each service building shall contain at least one (1) slop sink located in a separate compartment.

H. The service buildings shall be well lighted at all times of the day and night, shall be well ventilated with screened openings, shall be constructed of such moistureproof material, including the painted woodwork, as shall permit repeated cleaning and washing, and shall be maintained at a temperature of at least sixty-eight degrees Fahrenheit (68° F.) during the period from October 1 to May 1. The floors of the service building shall be of water-impervious material and shall slope to a floor drain connected with the sewerage system.

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I. All service buildings, mobile homes, mobile home spaces and the grounds of the park shall be maintained in a clean, sightly condition and kept free of any conditions that will menace the health of any occupant, of the public or constitute a nuisance.

§ 104-11. Laundry facilities.

A. The laundry facilities shall be provided in the ratio of one (1) double laundry tub and ironing board, or one (1) standard washer and drier, for every ten (10) mobile home spaces. An electric outlet [one hundred ten (110) voltage] shall be located conveniently near the ironing board. Drying spaces shall be provided sufficient to accommodate the laundry of the park occupants. The service building housing the laundry facilities shall be a permanent structure complying with all applicable ordinances and statutes regulating buildings, electrical installations and plumbing and sanitation systems. Hot water shall be provided for clothes-washing equipment.

B. Outside drying space adjacent to the service building or other clothes-drying facility shall be provided. A minimum of fifty (50) square feet per mobile home space shall be provided in the area used for outside clothes drying.

§ 104-12. Sewage disposal.

A. A system of sanitary sewerage shall be provided in mobile home parks, and all waste and soil lines discharging from buildings and mobile homes shall be connected thereto. Each mobile home space shall be provided with a trapped sewer below frost lines at least four (4) inches in

diameter and sloped so as to provide a minimum flow velocity of not less than two (2) feet per second when flowing half full. The sewer shall be provided with suitable fittings, so that a water and gaslight connection can be made between the mobile home drain and the sewer connection. Such individual home connections shall be so constructed that they can be closed when not linked to a mobile home, and shall be trapped in such a manner as to maintain them in an odor-free condition. Sufficient cleanouts, handholes and manholes shall be installed in sewer systems so as to maintain serviceable conditions. Sewer lines shall be located in a separate trench from water mains.

B. All sewers shall discharge into a public sewerage system where feasible, or where possible. In the absence of a public sewerage system, adequate private sewage disposal and treatment facilities shall be installed to treat a minimum average of one hundred fifty (150) gallons per day per mobile home space of ultimate capacity of the park. The treatment facility shall be located so that it shall not create a health or odor nuisance to the park or adjacent property occupants, or discharge untreated effluents in any body of water.

C. All sewerage systems shall meet applicable local plumbing and sanitary codes, shall be approved by the Health Officer and/or appropriate officials, and shall meet standards of the New Jersey Health Department.

§ 104-13. Refuse disposal.

A. A fly- and watertight metal garbage can shall be provided for each mobile home space adequate to permit

disposal of all garbage and rubbish. Garbage shall be collected at least twice a week.

B. Racks and holders shall be provided for all refuse containers. Such container racks shall be designed so as to prevent containers from being tipped, to minimize spillage and container deterioration, and to facilitate cleaning around them.

§ 104-14. Insect and rodent control.

A. Insect and rodent control measures to safeguard public health, as recommended by the Health Officer or other authority, shall be applied in the mobile home park.

B. Effective larvicidal solution may be recommended by the Health Office for fly- or mosquito-breeding areas which cannot be controlled by other, more permanent measures.

C. Accumulations of debris which may provide harborage for rodents shall not be permitted in the mobile home park.

D. When rats or other rodents are known to be in or near to the mobile home park, the operator shall take definite action under direction by appropriate health authority to exterminate them.

E. Suitable measures as recommended by the Health Officer shall be taken by the mobile home park operator to control other insects and obnoxious weeds.

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§ 104-15. Fire protection.

A. Fire alarms and instructions. Provision shall be made for giving a general alarm in case of fire. A bell, iron hoop or a similar manually operated device may be used for this purpose. It shall be the duty of the mobile home park owner or operator to instruct all tenants of means of summoning fire-fighting apparatus, police, medical help, and of the proper operation of fire extinguishers. A public telephone without the necessity of inserting a coin shall be available at all times to summon fire, police and other protective services. Up-to-date lists of telephone numbers of emergency services shall be permanently displayed near the telephone.

B. Fire extinguishers. Every mobile home in the park shall be equipped with at least one (1) approved hand-operated fire extinguisher of a type suitable for use on oil fires, preferably the foam type. The extinguisher shall be installed on the inside of the mobile home in a fixed location, preferably near a door, but in no case in close proximity to the cooking or heating stove. In the absence of a system of yard hydrants and hose, a complement of approved fire extinguishers on wheels for every twenty (20) mobile home spaces shall be provided, located not farther than one hundred fifty (150) feet from any mobile home. Each complement of extinguishers shall contain one (1) foam type extinguisher (with antifreeze) of a two-and-one-half-gallon rated capacity, for Class A type fires; and at least one (1) approved carbon-dioxide dry chemical or vaporizing liquid extinguisher of at least twenty-five-pound capacity for Class B oil-type fires. All extinguishers shall be kept in good operating condition and checked yearly by an appropriate authority.

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C. Mobile home park areas shall be kept free of litter, rubbish and other flammable material.

D. Means of egress. Two (2) doors, one (1) located at each end of the mobile home, shall be provided on the right side of the body. Doors and screen doors shall be of the hinged type, opening outwardly from the inside locks, when provided, shall be of the type that permits opening from the inside by the simple operation of a knob or lever or by pressure against the door.

§ 104-16. Oil-burning heating and cooking stoves.

A. Oil-burning cooking and heating stoves shall be of an approved type and shall be provided with flue connections to the outside of the mobile home. Flues shall penetrate the roof of the mobile home through a weathertight sheet metal shield or roof jack which shall provide a clearance of at least two (2) inches between the flue and combustible roof material, if approved outlet flues are provided. A clearance of at least six (6) inches shall be provided if metal flues are used. Downdraft diverters shall be provided on all vents from oil-burning stoves.

B. Oil-burning stoves for heating purposes may provide for attachment to fuel tanks located outside and separate from the mobile home. Auxiliary oil storage tanks, when provided, shall be so located as to require filling and drainage on the outside of the mobile home and shall be securely fastened in position in a place readily available for inspection. When installed in closed compartments outside the mobile home, such compartment shall be ventilated at the bottom.

C. No gasoline or portable stove equipment shall be permitted. Fires shall be made only in approved stoves, incinerators and other equipment intended for such purposes.

§ 104-17. Fuels.

Cylinders containing liquefied petroleum gas or oils to be used as fuel by mobile home occupants should be connected to the stove or heaters of the mobile home by copper or other metallic tubing, to provide leakproof connections. The cylinders should be securely fastened in place, not less than five (5) feet from any coach exit. State and local codes applicable shall be followed.

§ 104-18. Animal and pet.

No owner or person in charge of any dog, cat or other pet animal shall permit it to run at large.

§ 104-19. Alterations and addition.

A. No permanent additions of any kind shall be built onto nor become part of any mobile homes. Skirting of mobile homes is permissible, but such skirting shall not attach the mobile home permanently to the ground, create a fire hazard or provide a harborage for rodents.

B. The wheels of the mobile home shall not be removed, except temporarily when necessary for repairs. Jacks or stabilizers may be placed under the frame of the mobile home to prevent movement on the springs while the mobile home is parked and occupied.

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§ 104-20. Recreation areas.

At least one hundred (100) square feet per each mobile home space shall be made available in one (1) or more areas for recreational uses. These areas shall be located so as to be free of traffic hazards.

§ 104-21. Register of occupants.

A. It shall be the duty of the licensee to keep a register containing a record of all mobile homes, owners and occupants located within the park. The register shall contain the following information:

(1) Name and address of each occupant, and age if under twenty-one (21).

(2) The make, model and year of all automobiles and mobile homes.

(3) License number and owner of each mobile home and automobile by which it is towed.

(4) The state issuing such license.

(5) The dates of arrival and departure of each mobile home.

(6) Place of previous residence.

(7) The permanent address.

(8) Forwarding address.

B. The park operator shall keep the register available for inspection by township officials at all times. The register records shall not be destroyed for a period of three (3) years following the date of registration.

§ 104-22. Supervision.

A responsible attendant, caretaker, owner or operator shall be in charge at all times to keep the mobile home park, its facilities and equipment, in a clean, orderly and sanitary condition, and he shall be answerable with the licensee for any violation of the provisions of this Article.

§ 104-23. Communicable diseases.

It shall be the duty of each park owner or operator to report promptly to the Health Officer or other officials all cases of persons and animals infected or suspected of being infected with a communicable disease.

§ 104-24. Revocation of license.

The designated authority or Health Officer shall make inspections of the park to assure compliance with this Article, and parks shall be open for such inspections at all reasonable hours. In case of noncompliance with any provisions of this Article, the designated authority shall serve warning to the licensee. Thereafter, upon failure of the licensee to remove said violation, the Township Committee shall hold hearings on the matter, and upon determination of noncompliance, revoke said license. The license may be reissued if the circumstances leading to the revocation have been remedied, and the park can be maintained and operated in full compliance with the law.

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§ 104-25. Posting of license and regulations.

The license certificate and a copy of this Article shall be conspicuously posted in the office or on the premises of the mobile home park at all times.

§ 104-26. Violations and penalties.

Any person violating this Article shall be fined not less than twenty-five dollars ($25.) nor more than one hundred dollars $100.) for such offense or, in default of payment of the fine and costs imposed, shall be sentenced to the county jail for a period not exceeding five (5) days. Each day that a violation is permitted to exist shall constitute a separate offense. Payment of the fine shall not constitute compliance with the Article.

ARTICLE II

Rent Leveling; Rent Leveling Board
[Adopted 10-26-76 as Ord. No. 1598;[1] amended in its entirety 4-11-78 by Ord. No. 1733]

§ 104-27. Definitions.

The following definitions shall apply to this Article:

AVAILABLE FOR RENT TO TENANTS — Fit for habitation, as defined by the statutes, codes and ordinances

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1. Editor's Note: This ordinance also provided for the redesignation of former Ch. 104 as Art. I of this chapter and repealed former § 104-27, Severability § 104-28, Conflict of ordinances; and § 104-29, When effective.

in full force and effect in the State of New Jersey, County of Ocean and Township of Dover, and occupied or unoccupied and offered for rent.

CONSUMER PRICE INDEX — The consumer price index (all items) for the region of the United States of which the Township of Dover, New Jersey, is a part, published periodically by the Bureau of Labor Statistics, United States Department of Labor.

MOBILE HOME SPACE — Includes that portion of a mobile homes park rented or offered for rent for the purpose of parking or positioning a trailer or mobile home for living and dwelling purposes, to one (1) or more tenants or family units, together with all the privileges, services, equipment, facilities and improvements connected with the use or occupancy of such portion of the property. Mobile home spaces which are newly constructed and rented for the first time are exempted, and the initial rent may be determined by the owner. All subsequent rents will be subject to the provisions of this Article.

MOBILE HOMES PARK — As defined in § 104-1, Definitions, of Article I of this chapter.

RENTAL INCOME — The payable rent charged and received for the mobile home space over the previous twelve-month period, exclusive of any of the following: all real property taxes, space fees or license fees charged by the Township of Dover pursuant to any duly adopted ordinance and any cost of supplied utilities and any increase for hardship or major capital improvements as permitted by § 104-34 hereof.

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SERVICE — Mailing, to the home address by certified mail, return receipt requested, or in-hand delivery certified to by affidavit, or an acknowledgement of service executed by the person served, which affidavit or acknowledgement of service must be retained in the records of the person causing service.

SUPPLIED UTILITIES — Fuel, electrical, water and sewer services supplied directly to the individual mobile home for which services the landlord is responsible to the supplier for payment.

§ 104-28. Determination of rents.

A. Establishment of rents between a landlord and a tenant to whom this Article is applicable shall hereafter be determined by the following provisions:

(1) At the expiration of the tenancy for a mobile home space, no landlord may request or receive any increase in the rental income and additional charges for that mobile home space from any tenant, new or continuing, which is greater than a combination of the following:

(a) Any increased cost to the landlord for supplied utilities.

(b) Any increased cost to the landlord in mobile home space fees or license fees charged by the Township of Dover pursuant to any duly adopted ordinance.

(c) Any amount equal to three and one-half percent (3 1/2 %) of the previous twelve-month rental income for the mobile home space or the percentage increase in the consumer price index over the twelve-month period ending one hundred twenty (120) days prior to the date of the application for said increase, whichever shall be less.

(2) Any new or continuing tenant at the termination of a tenancy shall not suffer or be caused to pay any rent increase for the mobile home space in any twelve-month period which exceeds the above permitted increase for the twelve-month period.

B. No landlord may request or receive of the tenants any increase in rental income or additional charges except as provided by this section and until such time as the landlord shall have obtained approval in writing from the Rent Leveling Board, as hereinafter established, for said increase. Furthermore, there shall be only one (1) increase granted per landlord per mobile homes park per calendar year, for each of the increases permitted by this section, which request and decision shall be binding upon all tenancies of that particular mobile homes park which expire thereafter during said calendar year, unless as otherwise provided herein. The landlord shall notify the Rent Leveling Board in writing at least sixty (60) days prior to the effective date of any increase proposed pursuant to the provisions of this section. At the same time, a copy of said notice shall be served upon any tenant who may be affected by the increase applied for. Upon receipt of said notice, and where the increase sought is based on the terms of

Subsection A(1)(a) or (c) herein, the Rent Leveling Board shall schedule a hearing on said increase, and the landlord shall post, in a conspicuous place in or about the park, a notice of said hearing date-at least five (5) days prior to the proposed date of hearing. Where the increase sought is based upon the terms of Subsection A(1)(b) herein, no hearing shall be scheduled, and the increase shall become effective on the date specified in said notice, if all other applicable provisions of this Article are complied with.

§ 104-29. Reduction for municipal code violations.

Where a mobile homes park or any part thereof is being operated in violation of municipal codes and where such violation adversely affects habitability, any affected tenant or tenants may apply to the Board for a reasonable reduction in rent, commensurate with any such effect on habitability; whereupon the Board shall duly notify the landlord and schedule the matter for a hearing. If, as a result of such a hearing, the Board determines that a violation of a municipal code exists and that such violation affects habitability, it may grant a reasonable reduction in rent to the affected tenant or tenants, which rent shall remain in effect until the landlord corrects the said violation or violations.

§ 104-30. Timing of increase; excess increase.

Any rental income or additional charge increase at a time other than at the expiration of a tenancy or termination of a periodic tenancy shall be void, except as otherwise provided in this Article. Any rental income or additional charge increase in excess of that authorized by the provisions of this Article shall be void.

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§ 104-31. Rent reduction procedure.

A tenant shall be entitled to a rent reduction from a landlord because of a decrease in the municipal property taxes or cost of supplied utilities or any decrease in space fees or license fees charged by the municipality. The reduction shall not exceed that amount authorized by the following provisions:

A. Where the decrease consists of a decrease in the municipal property tax due to aid received from the State Aid for Schools Fund and where said decrease is subject to the provisions of P.L. 1976, c. 63 N.J.R.S. 54:4-62 et seq.), as may be amended from time to time, the landlord shall make such rebate upon such terms as P.L. 1976, c. 63, provides.

B. Where the decrease consists of a decrease in the municipal property tax other than that decrease provided for in Subsection A above, the landlord shall divide the decrease in the present tax over the tax for the previous year by the total number of completed mobile home spaces in the mobile homes park. The decrease each tenant is entitled to shall be a credit to rent in twelve (12) monthly installments commencing September of each year. Any tenant entitled to a rent decrease hereunder shall be served with a notice of the calculations involved in computating such reduction and the effective date of such reduction.

C. Where the decrease consists of a decrease in the cost of supplied utilities, space fees or license fees, the landlord shall divide the decrease in the present cost of supplied utilities, mobile home space fees or license fees over the cost of supplied utilities, mobile home space fees

or license fees of the previous year by the total number of completed mobile home spaces in the mobile homes park to obtain the decrease per space. The decrease each tenant is entitled to shall be a credit to rent on twelve (12) monthly installments commencing from the effective date of said reduction. Any tenant entitled to a rent decrease hereunder shall be served by the landlord with a notice of the calculations involved in computing such reduction and the effective date of such reduction.

§ 104-32. Tax surcharges.

A landlord shall be entitled to a rent surcharge for any increase in municipal property taxes. Any landlord seeking a surcharge for property taxes shall serve the tenants with a notice, at least thirty (30) days prior to the date on which said surcharge is to be effective, of the calculations involved, including the property tax for the mobile homes park for the year immediately preceding the year for which the tax surcharge is sought, and the increase in the present tax over the tax for the preceding year divided by the total number of completed mobile home spaces in the mobile homes park. The tax surcharge each tenant is liable for shall be paid in twelve (12) monthly installments commencing September of each year.

§ 104-33. Tax appeals.

A. In the event that a municipal property tax appeal is taken by the landlord and the landlord is successful in said appeal and the taxes reduced, the tenants involved shall receive fifty percent (50%) of said reduction after the landlord's costs of securing said tax reduction have been deducted. The landlord shall receive the remaining benefits

of the tax reduction. Thereafter, in succeeding years, the benefit of such successful tax appeal shall be divided evenly between the tenants and the landlord.

B. Any such successful landlord shall serve the tenants, within thirty (30) days after receipt of the judgment, with a notice of the calculations involved, including an itemization of the costs of securing said reduction and the reduction each tenant is entitled to, determined by dividing one-half (1/2) of the remainder of the amount of said tax reduction by the number of completed mobile home spaces in the mobile homes park.

§ 104-34. Additional rent increases.

A. Hardship. A landlord who finds that present rental income and additional charges from the mobile homes park on which he seeks relief hereunder are insufficient to cover the cost of payments on a first mortgage and any subsequent mortgages used to improve and upgrade the mobile home park and/or payments for maintenance and/or all operating costs and at the same time ensure the landlord a just and reasonable return may appeal to the Rent Leveling Board for an increase in rental income. Following a hearing, the Board may grant the landlord a hardship rent increase to meet these needs after considering the proofs presented by the landlord, the condition of the mobile homes park and degree of hardship to the landlord. Prior to any such appeal to the Board, a landlord must post, in a conspicuous place in and about the mobile homes park, a notice of said appeal, setting forth the basis for said appeal. Each tenant to be affected must, at the same time, be served with notice of the appeal. The landlord must, thereafter, post a notice of the

appeal hearing date in a conspicuous place at the mobile homes park at least five (5) days prior to the appeal hearing date. If said increase is granted, it shall not be considered rental income and not calculated in allowable increases as otherwise set forth in this Article. **[Amended 5-27-80 by Ord. No. 1927]**

B. Major improvements. A landlord may seek an additional charge for major capital improvements. "Capital improvements" shall be any item considered as such under the Federal Internal Revenue enactments and regulations. Prior to filing an appeal with the Rent Leveling Board, the landlord must serve each tenant with a notice of the total cost of the completed capital improvement, the number of useful years of life of the improvement as claimed by the landlord for purposes of depreciation for income tax purpose, the average cost, including debt service, of the improvement (calculated by dividing the cost of the major improvement by the total number of completed mobile home spaces in the mobile homes park) and the capital improvement surcharge he is seeking from each tenant. The landlord seeking a capital improvement surcharge shall appeal for said surcharge to the Rent Leveling Board, which shall determine, after the landlord has served notice to the affected tenants of a hearing date, if said improvement is a major improvement and, if so, the amount of increase granted for such major improvement and establish the conditions of such increase. If said increase is granted, it shall not be considered rental income and not calculated in allowable increases as otherwise set forth in this Article. In any event, no increase granted by authority of this subsection shall exceed ten percent (10%) of the tenants' rental income, unless said increase or capital improvement is mandated by law.

Appendix C

§ 104-35. Rent Leveling Board.

A. Board created.

(1) There is hereby created a Rent Leveling Board within the Township of Dover. The Board shall consist of five (5) regular members of whom one (1) shall be a mobile homes park landlord and one (1) a tenant of a mobile homes park. The Chairman shall be chosen by the Township Committee from among the nonland-lord/nontenant members; the Board shall designate its own Vice Chairman to serve, when needed, as the Acting Chairman. All members shall be appointed by the Township Committee and shall serve, commencing with the initial appointments, terms of one (1) year, two (2) years, three (3) years, four (4) years and five (5) years, respectively, and thereafter terms of five (5) years, commencing the first day of January of the year of their appointments.

(2) There shall be six (6) alternates appointed by the Township Committee to serve in the absence or disqualification of a corresponding regular member, two (2) of whom shall be neither a landlord nor a tenant of a mobile homes park, two (2) of whom shall be a landlord and two (2) of whom shall be a tenant of a mobile homes park, but neither alternate landlord nor alternate tenant members of the Board shall be of the same mobile homes park as a regular member. Three (3) of the alternates, one (1) from each of the categories above mentioned, shall be appointed for a term to expire on December 31, 1978, and their successors appointed for terms of two (2) years thereafter; the remaining three (3) alternates shall be appointed for a term to expire on December 31, 1979, and their successors

appointed for terms of two (2) years thereafter. In the event that any regular member of the Board shall be unable to attend any meeting, the senior alternate of that category shall attend in the place and stead of the absent regular member. In the absence of both the regular member and the senior alternate member, the junior alternate member shall serve in the place and stead of the regular member. Until December 31, 1978, the senior alternate member shall be that member whose term expires December 31, 1978.

(3) Vacancies shall be filled for the balance of the terms. Members shall not hold any other elective office or elective position in the township. The members of the Board shall serve without compensation but shall be reimbursed for reasonable and necessary expenses. The Board shall have available to it such clerical assistance, legal assistance and auditors' services as are budgeted annually by the Township Committee. No member shall vote upon or enter into discussions as to any matter in which he has a direct or indirect interest, financial or otherwise.

B. Powers and duties.

(1) The Rent Leveling Board is hereby granted and shall have and exercise, in addition to other powers herein granted, all the powers necessary and appropriate to carry out and execute the purposes of this Article, including but not limited to the following:

(a) To issue and promulgate such rules and regulations as it deems necessary to implement the purposes of this Article, such rules and regulations being subject to the approval of the Township Committee.

(b) To supply information and assistance to landlords and tenants to help them comply with the provisions of this Article.

(c) To hold hearings and adjudicate applications from landlords for additional rental income or charges as hereinafter provided.

(d) To hold hearings and adjudicate applications from tenants for reduced rental income or charges as herein provided.

(2) Said Board shall give both the landlord and tenant reasonable opportunity to be heard before making any determination and shall base its determination on the reasonable, credible evidence before it, although the strict rules of evidence shall not apply. The Board shall render an oral decision within thirty (30) days after the close of hearings. The Board shall maintain minutes of its hearings and/or meetings.

§ 104-36. Rent equalization.

Where there exists a disparity in rents within a mobile homes park for substantially similar facilities due to the enactment of this Article combined with the differing expirations and renewals of certain tenancies, any affected party may petition the Board for a hearing consistent with the terms of this section. If, as a result of such hearing, the Board finds a disparity in rents for the reasons aforesaid, the Board may, in its discretion, raise those low rents to the level of the majority of rents within the mobile homes park for similar facilities. A petitioner requesting such hearing shall serve every party to be

affected with a written notice of the reasons for his petition, including the calculations involved in the proposed increase, at least sixty (60) days prior to the proposed effective date of any such increase. Upon the scheduling of a hearing on such petition, the petitioner shall post, in a conspicuous place in or about the mobile homes park to be affected, a notice of said hearing date at least five (5) days prior to the proposed date of hearing and shall serve every party to be affected with such notice of hearing date.

§ 104-37. Standards.

A. During the term of this Article, the landlord shall maintain the same standards of service, maintenance and equipment in the mobile homes park or mobile home spaces as he provided or was required to do by law or lease, written or unwritten, as of the original effective date of this Article.

B. Where the landlord fails to maintain such standards and where such failure results in a substantial reduction of such standards, any tenant may appeal to the Board for a reasonable reduction in rent, commensurate with such reduction in standards; whereupon the Board shall duly notify the landlord and schedule the matter for hearing. If, as a result of such hearing, a reduction in rent is granted, it shall take effect as specified by the Board and shall remain in effect until the landlord proves the standards are being maintained.

§ 104-38. Violations and penalties.

A willful violation of any provisions of this Article, including but not limited to the willful filing with the Rent Leveling Board of any material misstatement of fact, shall be

punishable by a fine of not more than five hundred dollars ($00.) or imprisonment for not more than ninety (90) days, or both, in the discretion of the court, for each day the violation continues. A violation affecting more than one (1) leasehold shall be considered a separate violation as to each leasehold.

§ 104-39. (Reserved)